

**SETTLEMENT AGREEMENT**

**RAPHAEL PASS OIL SPILL**  
(NRDA Case File #LA2004\_0921\_1429)

**AMONG**

**LOUISIANA OIL SPILL COORDINATOR'S OFFICE, DEPARTMENT OF PUBLIC  
SAFETY AND CORRECTIONS; LOUISIANA COASTAL PROTECTION AND  
RESTORATION AUTHORITY; LOUISIANA DEPARTMENT OF  
ENVIRONMENTAL QUALITY; LOUISIANA DEPARTMENT OF NATURAL  
RESOURCES; LOUISIANA DEPARTMENT OF WILDLIFE AND FISHERIES; U.S.  
DEPARTMENT OF THE INTERIOR;  
AND GULF PRODUCTION COMPANY, INC.**

[Date]

**SETTLEMENT AGREEMENT FOR  
RAPHAEL PASS OIL SPILL (LA#2004\_0921\_1429) AMONG: THE  
LOUISIANA OIL SPILL COORDINATOR'S OFFICE, DEPARTMENT OF  
PUBLIC SAFETY AND CORRECTIONS; LOUISIANA COASTAL  
PROTECTION AND RESTORATION AUTHORITY; LOUISIANA  
DEPARTMENT OF ENVIRONMENTAL QUALITY; LOUISIANA  
DEPARTMENT OF NATURAL RESOURCES; LOUISIANA DEPARTMENT  
OF WILDLIFE AND FISHERIES; U.S. DEPARTMENT OF THE INTERIOR  
AND GULF PRODUCTION COMPANY, INC.**

**I. INTRODUCTION**

- A. The State of Louisiana, appearing through the Louisiana Oil Spill Coordinator's Office, Department of Public Safety ("LOSCO"), the Louisiana Coastal Protection and Restoration Authority ("CPRA"), the Louisiana Department of Environmental Quality ("LDEQ"), the Louisiana Department of Natural Resources ("LDNR"), the Louisiana Department of Wildlife and Fisheries ("LDWF"), and the U.S. Department of the Interior ("Interior"), acting through the U.S. Fish and Wildlife Service, (collectively referred to as the "Trustees") and Gulf Production Company, Inc. ("Gulf Production") (each a "Party" and collectively, the "Parties") enter into this Settlement Agreement to resolve, without litigation, the State of Louisiana's natural resource damage claims under the Oil Pollution Act ("OPA"), 33 U.S.C. §§ 2701 et seq., and the Oil Spill Prevention and Response Act ("OSPRA"), La. R.S. 30:2451 et seq., and Interior's claims for natural resource damages under OPA resulting from the unauthorized discharge of crude oil from a storage tank owned and operated by Gulf Production (hereinafter "the Incident" as defined in Section II.E of this Agreement).
- B. LOSCO, CPRA, LDEQ, LDNR LDWF, and Interior have shared jurisdiction for the natural resources and their services that were injured as a result of the Incident. This Settlement Agreement is executed on behalf of the State of Louisiana and Interior in their capacities as Natural Resource Trustees under OPA.
- C. The State of Louisiana, through LOSCO, CPRA, LDEQ, LDNR and LDWF, is authorized to seek natural resource damages, including the reasonable costs to assess the damages, pursuant to Section 1002 of OPA, 33 U.S.C. § 2702 and Section 2480 of OSPRA.
- D. Interior is authorized to seek natural resource damages, including the reasonable costs to assess the damages, pursuant to Section 1002 of OPA, 33 U.S.C. § 2702.

- E. This Settlement Agreement deals solely with the Trustees' claims for natural resource damages that resulted from the Incident pursuant to 33 U.S.C § 2702(a) and (b)(2)(A) and La. R.S. 30:2480.

Now, therefore, the Parties enter into this Settlement Agreement, and mutually agree as follows:

## II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Settlement Agreement shall have the same definition given to them in OPA, OSPRA, and the Natural Resource Damage Assessment ("NRDA") regulations promulgated under OPA and OSPRA (15 CFR Part 990 and LAC 43:XXIX.101 *et seq.*). In the event of a conflict between the definitions in this Settlement Agreement and the definitions in OPA, OSPRA, and the NRDA regulations, the definitions in this Settlement Agreement shall govern.

- A. "Agreement" shall mean this Settlement Agreement.
- B. "Effective Date" for purposes of this Agreement shall mean the date of the last signature of this Agreement.
- C. "Future Restoration Project Planning and Implementation Costs" shall mean those costs incurred by the Trustees after the Effective Date of this Agreement for the planning, selection, design, implementation, permitting (as necessary), monitoring, and oversight of restoration project(s) and for the costs of complying with the requirements of the law to conduct restoration planning and implementation. The Trustees will use the funds to restore, rehabilitate, replace or acquire the equivalent of any natural resource and natural resource services injured, lost, or destroyed as a result of the Incident and for the oversight of the selected restoration project(s).
- D. "Gulf Production Company, Inc." shall mean Gulf Production and its successors, assigns, employees, directors, officers, agents, guarantors, and underwriters, or other entities or persons otherwise bound by law.
- E. "Incident" shall mean the discharge of approximately 362 barrels of crude oil into Raphael Pass and the surrounding Delta National Wildlife Refuge, Plaquemines Parish, Louisiana on or about September 19, 2004 from a storage tank owned and operated by Gulf Production.
- F. "Outstanding Past Assessment Costs" shall mean the reasonable costs, including but not limited to direct and indirect costs, incurred by the Trustees in assessing the natural resource damages and in restoration planning for the Incident that have not been paid as of the Effective Date of this Agreement.

- G. “Settlement Amount” means the dollar amount to be paid by Gulf Production to Interior and the State of Louisiana, through LOSCO, to resolve the Trustees’ claims for natural resource damages under OPA and OSPRA that resulted from the Incident. This dollar amount includes all Outstanding Past Assessment Costs and Future Restoration Project Planning and Implementation Costs of the Trustees.

### III. STATEMENT OF FACTS

- A. On September 16, 2004, Hurricane Ivan made landfall in Alabama as a Category 3 hurricane, with feeder bands that brought storm surge and wind into Plaquemines Parish, Louisiana.
- B. A storage tank at Gulf Production’s Raphael Pass Field, Plaquemines Parish, Louisiana shifted off its foundation, lost structural integrity, and discharged an estimated 362 barrels of crude oil condensate into the surrounding Delta National Wildlife Refuge.
- C. At the time of the release, the tank was owned and operated by Gulf Production, and a representative of Gulf Production notified the Trustees of the unauthorized discharge on September 21, 2004.
- D. Gulf Production and its oil spill response contractor(s) initiated, conducted, and participated in response actions to contain and remove the discharged crude oil.
- E. Marsh vegetation and sediments, resident and migratory birds, aquatic species, waterways and interior marsh ponds, as well as other flora and fauna, were actually or potentially affected by the spill.
- F. The concentration and quantity of oil discharged were sufficient to actually or potentially cause injury to natural resources, including visible oiling of flora and fauna in the area.
- G. Response actions implemented by Gulf Production and other entities mitigated the effects of the discharge, but provided no compensation for the natural resources and their services that were actually or potentially injured, lost, or destroyed as a result of the spill.
- H. On December 15, 2004, pursuant to 15 C.F.R. 990.14(c), La. R.S. 30:2480(C)(6)(b) and (c), and LAC 43:XXIX.115, the Trustees invited Gulf Production to participate in the Natural Resource Damage Assessment for the Incident.
- I. Gulf Production accepted the Trustees’ invitation on January 5, 2005 and worked with the Trustees in assessing the natural resource injuries.

- J. The Trustees have expended considerable time, funds, and resources in assessing the Incident and any natural resource injuries and losses that may have resulted from the Incident. The remaining unpaid balance for Outstanding Past Assessment Costs is \$64,679.67.
- K. The Trustees will continue to incur Future Restoration Project Planning and Implementation Costs in conjunction with implementation of this Agreement.
- L. The total Settlement Amount including Outstanding Past Assessment Costs and Future Restoration Project Planning and Implementation Costs is \$460,569.67.

#### IV. AGREEMENTS

- A. Gulf Production and the Trustees agree that settlement without litigation is in the best interest of the public.
- B. The Trustees and Gulf Production agree that, within thirty (30) days of the Effective Date of this Agreement, Gulf Production shall pay the Settlement Amount of \$460,569.67 in lieu of performing a restoration project in accordance with LAC 43:XXIX.131 as follows:
  - 1. A total of \$276,700 shall be paid to Interior in accordance with payment instructions attached to this Agreement as Appendix A.
  - 2. A total of \$183,869.67 shall be paid to LOSCO, on behalf of the State of Louisiana, in accordance with payment instructions provided to Gulf Production by LOSCO in advance of the Effective Date of this Agreement. The payment shall reference "Raphael Pass LA2004\_0921\_1429".
- C. Upon signature of this Agreement, the Parties agree that these costs (as defined in Section IV.B of this Agreement) cannot be disputed and will be considered final.
- D. In the event that payments required by Paragraph IV.B are not made within thirty (30) days from the Effective Date of this Agreement, interest on the unpaid balance shall begin to accrue on the thirty-first (31<sup>st</sup>) day, and continue to accrue through the date of full payment. Payment shall be made in accordance with the instructions provided in the Subparagraph that corresponds to the unpaid amount(s). Interest will be calculated pursuant to 33 U.S.C. § 2705(b)(4).
- E. Any change in ownership or corporate status of Gulf Production including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Gulf Production's rights or responsibilities under this Agreement. In any action to enforce this Agreement, Gulf Production shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions

necessary to comply with the provisions of this Agreement.

- F. The Trustees agree that Future Restoration Project Planning and Implementation Costs paid by Gulf Production will be held by Interior, in its Natural Resource Damage Assessment and Restoration Fund, and by LOSCO, in its Natural Resource Restoration Trust Fund established in accordance with La. R.S. 30:2480.2, solely for use, as agreed by the Trustees, for the joint planning, implementation, monitoring and oversight of restoration project(s) for injuries to natural resources resulting from the Incident.
- G. The Trustees preferred restoration project(s) will be contained in a Restoration Plan prepared and implemented jointly by the Trustees, for which public notice, opportunity for public input, and consideration of public comment will be provided, as required under OPA and OSPRA. Once the public review process has been completed, the Trustees will implement the Restoration Plan with any revisions the Trustees may deem appropriate after considering any public comments.
- H. Decisions regarding any use or expenditure of the Settlement Amount shall be made by the Trustees. Gulf Production shall not be entitled to dispute, in any forum or proceeding, any decision relating to use of the Settlement Amount or restoration efforts pursuant to this Agreement.

V. NO ADMISSIONS OR DENIALS

- A. By entering into this Agreement, Gulf Production shall not be deemed as admitting any liability arising out of or relating to the Incident. Gulf Production neither admits nor denies the facts cited in this Agreement and agrees to pay the Settlement Amount set forth in this Agreement.

VI. RELEASE, COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

- A. Subject to and in consideration of Gulf Production's complete payment of the Settlement Amount and any interest owed according to Section IV of this Agreement, the Trustees hereby agree to release and not to file suit or take enforcement or other administrative actions against Gulf Production for natural resource damages for the Incident pursuant to OPA and OSPRA. This release and covenant not to sue is conditioned upon receipt by Interior and LOSCO of all payments required by this Agreement. This release and covenant not to sue extends only to Gulf Production and does not extend to any other person.
- B. Gulf Production hereby covenants not to sue and agrees not to assert any claims or causes of action against the State of Louisiana and Interior for any claims arising from or relating to the Incident, pursuant to any federal, state, or common law, including, but not limited to any claims based on the Trustees' selection and

implementation of a restoration project for the purposes of compensating the public for injuries to natural resources resulting from the Incident; and/or approval of plans for any such activities. Nothing herein shall be construed to constitute a waiver by the Trustees of Sovereign Immunity of the State of Louisiana.

- C. Nothing in this Agreement is intended to be, nor shall be construed as, a release or covenant not to sue for any claim or cause of action, administrative or judicial, for:
  - 1. Failure of Gulf Production to meet a requirement of this Settlement Agreement;
  - 2. Any other past releases, future releases, discharges, or spills;
  - 3. Any and all criminal liability; or
  - 4. Any other matter not expressly included in the release from liability for natural resource damages for this Incident set forth in Section VI.A.

## VII. AMENDMENT TO AGREEMENT

- A. This Agreement may be amended by mutual consent of the Trustees and Gulf Production. Such amendments shall be in writing and shall have as their effective date the date on which they are signed by all of the parties to this Agreement.
- B. The Trustees may grant an extension of any deadline in this Agreement upon a written request showing good cause by Gulf Production.

## VIII. CERTIFICATIONS

- A. Gulf Production certifies that, to the best of its knowledge and belief, it has fully and accurately disclosed to the Trustees all information requested by the Trustees that is currently in the possession of Gulf Production's officers and employees, contractors, and agents relating to the Incident.
- B. The Trustees certify that, to the best of their knowledge and belief, no other Trustee intends to present a claim for damages to natural resources and services that may have been injured, destroyed, or lost as a result of the Incident.

## IX. SEVERABILITY

Invalidation of any one of the provisions contained herein shall in no way affect any other provision, which shall remain in full force and effect.

## X. EXECUTION

This Agreement may be executed in one or more counterparts. All counterpart signature pages shall be considered part of the original document. Each party signing below covenants that he or she is fully authorized to enter into the terms and conditions of this Agreement and duly authorized to bind the party for whom he or she is signing.

XI. VENUE

Venue of any action brought with regard to this Agreement shall be in the Nineteenth Judicial District Court, parish of East Baton Rouge, State of Louisiana.

IN WITNESS WHEREOF, this Agreement is executed by each of the Parties as of the dates written below.

[Signature Pages Follow]



**FOR THE STATE OF LOUISIANA:**

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Samuel E. Jones  
Coordinator  
Louisiana Oil Spill Coordinator's Office

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Date

**FOR THE STATE OF LOUISIANA:**

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Chuck Carr Brown, PhD.  
Secretary  
Louisiana Department of Environmental Quality

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Date

**FOR THE STATE OF LOUISIANA:**

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Jack Montoucet  
Secretary  
Louisiana Department of Wildlife and Fisheries

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Date

**FOR THE STATE OF LOUISIANA:**

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Thomas F. Harris  
Secretary  
Louisiana Department of Natural Resources

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Date

**FOR THE STATE OF LOUISIANA:**

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Kyle R. “Chip” Kline, Jr.  
Chairman  
Louisiana Coastal Protection and Restoration Authority

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Date

**FOR THE U.S. DEPARTMENT OF THE INTERIOR:**

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Peg Romanik  
Associate Solicitor  
Office of the Solicitor  
Division of Parks and Wildlife

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Date

Signature Page for Raphael Pass Oil Spill Settlement Agreement

**FOR GULF PRODUCTION COMPANY, INC.**

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Name  
Title

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Date